

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
April 24, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, April 24, 2007 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were: Sean Duffy, Chair  
Jack Currier, Vice Chair  
Jeff Anderson  
Claire McHugh  
Carter Falk, Deputy Planning Manager/Zoning

Mr. Duffy explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Duffy explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Duffy also explained procedures involving the timing light.

- 1. Philip M. & Melissa Levesque (Owners) 58 New Dunstable Road (Sheet 87 Lot 215) requesting special exception to allow a major home occupation for a dog and cat grooming salon. RA Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Melissa Levesque, 58 New Dunstable Road. Ms. Levesque described her proposed business, and went over all the major home occupation criteria to the Board's satisfaction. She also went over the special exception points of law. Discussion ensued between the applicant and the Board relative to the fence and other site issues.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Letter from Brian Harnedy and Chris Dunn, 19 Danbury Drive, Merrimack, NH. They were concerned about potential traffic in the neighborhood, as well as the noise from barking dogs.

**REBUTTAL IN FAVOR:**

Melissa Levesque, 58 New Dunstable Road. Ms. Levesque said the business is done in the basement, and it will be a relaxed environment. She said there will be no impact to the neighbors. She said the traffic will not be a negative impact during the day.

The Board discussed days and hours of operation, and the applicant was open to the Boards comments. She said the dogs get groomed, and may stay at the house for three to four hours, but they go outside, supervised, and are not left unattended for a long time.

**REBUTTAL IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Duffy to grant the special exception, as it is listed in the Table of Uses, Section 16-92 (b), it should not create undue traffic congestion or unduly impair pedestrian safety, it should not overload public water, drainage or sewer or other municipal systems, it is a very reasonable use of a major home occupation in this neighborhood, the special conditions are all fulfilled per testimony, it should not impair the integrity or be out of character with neighborhood or be detrimental to health, morals or welfare of residents. The Special Conditions are the hours of operation are Monday through Friday from 9:00 a.m. to 6:00 p.m., no weekends.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY, 4-0.**

2. Nelson Family, LLC (Owner) 280 Amherst Street (Sheet G Lot 43) requesting variance to allow an additional three feet in height on an existing non-conforming ground sign, minimum required front yard setback 10 feet, 0 feet existing. HB Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that an Ordinance was recently passed that requires an applicant to proceed with at least three Board members. He believes this is a constitutional violation of his clients rights to be able to present the case to a five member Board, not just three or four members.

Atty. Prunier stated that the Electronic Message Center part of the sign is not working now, and will be replaced. He said all they wish to do is to raise the sign three feet in height, but it is within the setback. The original sign was there when they had smaller cars, now, there are a lot of SUV's and taller trucks, and the sign is much less visible. Atty. Prunier went over all the variance points of law.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Anderson to grant the area variance. The variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. He stated that the request is within the spirit and intent of the ordinance, the Electronic Message Center will continue to be in compliance, it will not adversely affect the property values of surrounding parcels, it is not contrary to the public interest, and substantial justice is served.

**SECONDED** by Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 4-0.**

3. Mariann Farrell (Owner) 20½ King Street (Sheet 14 Lot 79) requesting the following variances: 1) lot area, 6,000 square feet required - 5,300 square feet proposed, and 2) lot width, 60 feet required - 50 feet proposed - to construct a single-family house on a nonconforming lot. RB Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Mariann Farrell, 22 King Street. Ms. Farrell said she owns the adjacent lot, but is taxed separately. She described the property location and property dimensions. She distributed a package for the Board, and went over the contents. She said the proposed house would be a colonial with a gable end facing the street, with a farmers porch across the front. She said there is an existing garage that she would like to keep. All the variance points of law were discussed.

Discussion ensued between the applicant and the Board. She said there have been a couple new homes built recently in the neighborhood, and they fit in nicely.

Ms. Farrell described the lot areas and lot widths in the neighborhood, and how her proposed lot is very similar to others in the neighborhood.

Ms. Farrell described the parking for the existing and proposed unit.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Clarise Arnold, 20 King Street. Ms. Arnold said her main concern was that it is overcrowding the land. She had some concerns about the side yard setbacks, which were explained by the Board. Ms. Arnold did not believe the request was within the public benefit.

**SPEAKING IN FAVOR - REBUTTAL:**

Mariann Farrell, 22 King Street. Ms. Farrell stated that there will be about 15-20 feet between her home and the neighbors home. For the benefit to the public, a new home in the neighborhood will be an attraction and will help. She said there will be adequate parking. She said she only rents to single persons.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

Clarise Arnold, 20 King Street. Ms. Arnold again asked about the side yard setbacks, and the Board clarified that the side yard setbacks will be satisfied. The Board said the new house would be all the way to the right, or east, away from her house.

Mr. Currier stated that he was concerned about the parking for the existing home. The Board discussed parking for the existing and proposed use.

**MOTION** by Mr. Duffy to grant the variances. Mr. Duffy stated that the variance is needed to enable the applicant's proposed reasonable use of the property, given the special conditions of the property in that this neighborhood is multi use, mixed use of single family and multi-family on lots that are exactly the same size in many instances, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. It is within the spirit and intent of the ordinance that the applicant have reasonable application for area variance, the proposal is for a single-family home which will not be a more intense use in the neighborhood. Mr. Duffy stated that the request should not adversely affect the property values of surrounding parcels, the neighborhood is undergoing some redeveloping work that has positively changed the neighborhood. Mr. Duffy stated that substantial justice is served that reasonable development rights be granted. The Special Condition is that it will be a single-family home, and the applicant will abide by all yard setbacks.

**SECONDED** by Mr. Anderson.

**AMENDMENT** to the Motion by Mr. Currier that the applicant provide a minimum of three unstacked parking spaces for 22-24 King Street.

**NO SECOND** to the Amendment.

**AMENDMENT FAILS.**

**MOTION APPROVED 3-1 (Mr. Currier).**

4. **Geoffrey Lynch (Owner) 131 Harris Road (Sheet B Lot 226) requesting variance for lot depth, 90 feet required, a mean lot depth of 56 feet proposed - to subdivide one lot into two lots. R9 Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Attorney Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that an Ordinance was recently passed that requires an applicant to proceed with at least three Board members. He believes this is a constitutional violation of his clients rights to be able to present the case to a five member Board, not just three or four members.

Atty. Prunier described the lot dimensions to the Board. In addition, Atty. Prunier described a "lot within a lot" of an area where the end of the narrow part of the triangular part of the lot could be taken out of the lot, and would be close to meeting the lot depth requirement. Atty. Prunier went over all the variance points of law. Atty. Prunier stated that the site engineer is in attendance.

Steven Auger, Hayner Swanson, Inc., 3 Congress St, Nashua, NH. Mr. Auger said the topography difference is only about 2 1/2 to 3 feet. Mr. Auger stated that there are no other easements on the property that they could find.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

James Scarano, 14 Nightingale Road. Mr. Scarano believes his property values will be negatively impacted by the granting of the variance. He also stated that the minimum lot size requirements should not be waived for this request.

Ald. Greg Williams, 34 Shingle Mill Drive. Ald. Williams asked how many new homes will be built with this request. Ald. Williams does not believe this request fits the spirit and intent of the land use code, and didn't see any hardship, especially since the property owner just purchased the property last fall. He does not believe how this request is in the public benefit, and how two homes would fit in this area.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier, 20 Trafalgar Square. Atty. Prunier stated that there are two lots being proposed, for two single-family homes. He went over the lot depth requirements. Atty. Prunier stated that they are not seeking any lot setback variances, only the one for lot depth. He went over the proposed triangular piece to be subdivided off, and described the portion of the lot that they could have a lot within this lot that would meet all the setback requirements.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

James Scarano, 14 Nightingale Road. Mr. Scarano stated that he did not believe the variance should be granted.

The ZBA suspended their rules to have additional testimony from Ald. Williams.

Ald. Greg Williams, 34 Shingle Mill Drive. Ald. Williams said he was not an Alderman when the Land Use Code was adopted. He also asked about the lot dimensions that are proposed.

Atty. Prunier explained how the lot would be subdivided, and how the current property has approximately 28,000 square feet in size.

**MOTION** by Mr. Currier on behalf of the owner to grant the area variance. Mr. Currier stated that a stipulation of approval is that no structure, whether they are accessory structures or decks, are built into the setback areas of either lot 226 or 226-1. Mr. Currier stated that with that stipulation, the applicant's use of the property could not be met without the variance. Mr. Currier stated that the request is within the spirit and intent of the ordinance to allow two structures to be placed upon this large property, with the property setbacks being respected, it will not impact the property values of

surrounding parcels, it is not contrary to the public interest, and substantial justice is served. Special Conditions are that no structures, including decks, are to be built in the setback area.

**SECONDED** by Mr. Anderson.

Mr. Duffy stated that the property is rather large for this area, and it is in keeping with the neighborhood that single-family homes be built here.

**MOTION CARRIED 3-0-1 (Ms. McHugh abstained).**

5. Michael R. & Sara G. Boucher (Owners) "L" Fowell Avenue (Sheet 108 Lot 48) requesting the following variances: 1) lot area, 7,500 square feet required - 5,622 square feet proposed, and 2) lot width, 75 feet required - 70.97 feet proposed, both requests to transfer common ownership between two contiguous non-conforming lots. RA Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that an Ordinance was recently passed that requires an applicant to proceed with at least three Board members. He believes this is a constitutional violation of his clients rights to be able to present the case to a five member Board, not just three or four members.

Atty. Prunier described the location of where the proposed house would go on Fowell Avenue. He stated that there are several letters of support that have been submitted. He described the sizes of lots within the neighborhood. Atty. Prunier described how the requests meet the area variance points of law.

Discussion ensued between the applicant and the Board. The detached garage at 18 Fowell Avenue would be removed, and parking would have to be in the driveway. Atty. Prunier described where the proposed driveway would be located.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

Keri Siciliano, 19 Fowell Avenue. Ms. Siciliano stated that the lot does not have enough area, is not wide enough, and also believes a variance is needed for the lot depth. She does not believe it is a good fit to place a house here. She submitted a package for the Board to review. She said this would create two non-conforming lots. She believes that granting these variances would be contradictory to the Master Plan, and against the spirit and intent of the ordinance. She also raised issues with parking and the desecration of green space. She mentioned that there will be negative impacts with the municipal systems.

Tom Siciliano, 19 Fowell Avenue. Mr. Siciliano stated that he agreed with what his wife testified to. He stated his biggest issue is with the parking.

Mike Yousca, former owner of 18 Fowell Avenue. He stated that he was involved with the sale to the Boucher's, and was told by City staff that it is a non-buildable lot.

Mike Siciliano, 95 Taylor Street. Mr. Siciliano said there is a problem with parking, and cannot get into his brother's driveway when there are cars parked on the street. He mentioned that safety vehicles cannot make it down that street, especially on holidays. He said by adding another driveway, it will make it a more long-term problem.

John Koutsas, 3 East Dunstable Rd. Mr. Koutsas asked if Section 16-302 is still in the land use code, and questioned whether this property must conform to this. He stated that this is going from one conforming lot to two non-conforming lots.

Leslie Sweeney, 14 Fowell Avenue. Ms. Sweeney agreed with previous testimony. She said it's important that this neighborhood conforms to it's current character.

Ruth Lyons, 6 Catherine Street. Ms. Lyons agreed with previous speakers, and asked the Board to deny the request.

Shirley Kraft, 8 Catherine Street. Ms. Kraft agreed with previous speakers as well.

Letter from John Rudolph, 6 Fowell Avenue. The letter stated many of the issues that have been previously raised.

**SPEAKING IN FAVOR - REBUTTAL:**

Atty. Gerald Prunier, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that the lot is undersized, but the frontage is only about 4 feet short of what is required. He stated that there are letters from most all the abutters, except the Siciliano's, in support of the request. Atty. Prunier said the sewer issue has not been addressed to the DPW office.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

John Koutsas, 3 East Dunstable Road. Mr. Koutsas stated that the house and garage are on one lot. He believes the lots are merged by ordinance.

**MOTION** by Mr. Currier on behalf of the owners to table the request until the May 8, 2007 meeting to review the testimony and to do further due diligence. It will be the last case on the Agenda, and only the public meeting.

**SECONDED** by Mr. Duffy.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**6. Nash Family Investment Properties & Stellos Family Investment Properties (Owners) 103 Temple Street (Sheet 37 Lot 6) requesting use variance to allow games of chance (Bingo and Lucky 7) in a portion of an existing building. GI Zone.**

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Attorney Gerald Prunier, Prunier & Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prunier stated that an Ordinance was recently

passed that requires an applicant to proceed with at least three Board members. He believes this is a constitutional violation of his clients rights to be able to present the case to a five member Board, not just three or four members.

Attorney Prunier described the property location. He said it's the old J.F. McElwain Building, that used to make shoes. He said that the southeast corner of the building will be used for the proposed Bingo Hall, which will take approximately 13,000 square feet. Infant Jesus Church and Bishop Guertin will be two main users of the space.

Atty. Prunier stated that the interior of the building will be fixed up and modernized, and the parking lot will be resurfaced, which holds approximately 200 vehicles. He also stated that this property is close to other zones that would allow this use by right.

Atty. Prunier stated that the proposed use will be a good use for the building and the area, and will not interfere with other businesses in the building. He went over the use variance points of law.

Discussion ensued between the Board members and the applicant relative to parking spaces, cleaning up the property, site lighting and landscaping.

Barry Josten, 16 Graves Street, Hudson, NH. Mr. Josten stated that the building is lit, and if more is needed, they will install them.

Further discussion ensued about previous ZBA approvals and stipulations of approval, relative to landscaping, buffers, and cleaning the area.

Atty. Prunier described what types of games will be played at the property, all regulated by the State of New Hampshire. These games are governed by the pari-mutual. It will be done in a commercial hall, and must be tax exempt and non-profit.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

No One.

**MOTION** by Mr. Currier to grant the use variance on behalf of the applicant. Mr. Currier stated that the allowance of this use will bring a clientele to the building and the adjoining lot, thereby improving its condition. By doing so, it is within the spirit and intent of the ordinance, and will increase the surrounding property values. Mr. Currier stated that the use is not contrary to the public benefit, and substantial justice is served. Stipulations are that: the applicant's attorney to review the previous minutes that have come before the ZBA, and to provide a letter to the ZBA and Planning Board as to whether the previous stipulations are in effect or not; and that the parking lot is clean and debris is removed, broken windows are repaired, graffiti is removed on this portion of the building, and the building is brought up to the Fire Code, and landscaping and lighting is improved, and the use is limited to Bingo and Lucky 7.

**AMENDMENT TO THE MOTION** by Ms. McHugh that the owners to landscape the perimeter of the parking lot around this area to the satisfaction of the Planning Board.

**SECONDED** by Mr. Anderson.

**AMENDMENT TO THE MOTION APPROVED 3-1 (Mr. Duffy).**

**MOTION APPROVED UNANIMOUSLY 4-0.**

7. Estate of Francis W. Alling, c/o Robert K. Alling (Owner) 15 Overhill Avenue & 16 Metropolitan Avenue (Sheet 55 Lots 15 & 18) requesting the following variances: 1) lot frontage, 60 feet required, 15 feet proposed, and 2) lot width, 75 feet required, 15 feet proposed - both requests to allow access to a lot without street frontage. RA Zone.

Voting on this Case:

Sean Duffy  
Jack Currier  
Jeff Anderson  
Claire McHugh

Robert Alling, 78 Brackett Hill Road, Alfred Maine. Mr. Alling stated that his father owned both of the lots until his passing. He described how there is a lot line relocation plan to have two lots, and the new lot would have a small frontage on Metropolitan Avenue. He stated that the hardship is that there is a steep slope and topography issues so that Overhill Avenue cannot be extended.

Mr. Alling also stated that the sewer line is above Overhill Avenue is above the site, and that the placement of the existing house is taking up a lot of the width if it were placed further over. Mr. Alling went over all the other variance points of law. He stated that both parcels would be conforming in area.

Further discussion ensued between the Board and the applicant.

**SPEAKING IN FAVOR:**

No One.

**SPEAKING IN OPPOSITION OR WITH CONCERNS:**

James Dacey, 14 Overhill Avenue. Mr. Dacey has concerns about the orientation of the home, and there will be a large foundation wall staring at him. He also has concerns about the possibility of a driveway entering the lot off of Overhill Avenue. He said the request may not necessarily help the neighborhood. He stated that he has concerns about the utilities.

Ted Sullivan, 14 Metropolitan Avenue. Mr. Sullivan stated that he is concerned about the grade in the rear yards. He said that he is concerned about drainage and water going towards his yard. He felt that a house located basically in back of his will devalue his property, and will not benefit the neighborhood. He said his privacy will be taken away.

Anna Sullivan, 14 Metropolitan Avenue. Ms. Sullivan said that with this proposal, it will harm her gardens in the rear.

Letter from Andrew & Karlene Dratch, 22 Overhill Avenue. The Board passed the letter around so everyone could read it, and then read it into the record.

**SPEAKING IN FAVOR - REBUTTAL:**

Robert Alling, 78 Brackett Hill Road, Alfred Me. Mr. Alling addressed concerns about drainage and surface water. He said the plans are still under review by the surveyor, and said he still has the right to use the property for this use. He said there is more than enough space for a single-family home in this area.

Mr. Alling stated that there will be plenty of room for safe access. He said that by extending Overhill Avenue will be difficult and will present a hardship. He stated that the surface water issue can be controlled, and there is ample square feet of a lot to control surface water.

He stated that it wouldn't be out of character with a house in the back of another house, especially in this particular situation.

**SPEAKING IN OPPOSITION OR WITH CONCERNS - REBUTTAL:**

James Dacey, 14 Overhill Avenue. Mr. Dacey stated that he was glad that the ZBA members came out to the site. He said that he is concerned about the drainage in this area. He said the lot in the back was bought after the lot in the front was purchased.

**MOTION** by Mr. Currier to deny the requests, as there is evidence provided that the lot in the back has been a lot of record for many years, there is evidence provided tonight that it will adversely affect the property values of surrounding parcels by having a long driveway right adjacent to an abutting property is not within the spirit and intent, it is contrary to the public interest, and substantial justice is not served.

**SECONDED** by Ms. McHugh.

**MOTION CARRIED UNANIMOUSLY 4-0** (both requests).

**REHEARING REQUESTS:**

None.

**MINUTES:**

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**MOTION** by Mr. Duffy to accept the minutes, waive the reading, and place them in the file.

**SECONDED** by Mr. Anderson.

**MOTION CARRIED UNANIMOUSLY 4-0.**

**REGIONAL IMPACT:**

The Board determined that none of the cases were determined to have regional impact.

**ADJOURNMENT:**

Mr. Duffy called the meeting closed at 11:28 p.m.

Jack Currier  
Acting Clerk

CF  
Taped Hearing